TORTS — PROCURING BREACH OF CONTRACT — JUSTIFICATION. — A labor union by threatening a strike forced a business firm to break its contract with an apprentice, and when sued by the latter justified its action on the ground of its prior contract with the firm forbidding such employment. *Held*, that the prior contract does not constitute justification. *Read* v. *Friendly Society, etc.*, 19 T. L. R. 20 (Eng., C. A.). See NOTES, p. 299.

TORTS — SEDUCTION — RECOVERY BY MOTHER AFTER DEATH OF FATHER. — A daughter was seduced and rendered pregnant during her father's lifetime. The father died two months before her confinement and her mother instituted the action. *Held*, that the mother may not recover, because the daughter was not her servant at the time of seduction. *Hamilton* v. *Long*, 36 Irish L. T. R. 189. See NOTES, p. 298.

WILLS — BEQUEST PROCURED BY MISREPRESENTATION OF PERSON OTHER THAN THE LEGATEE. — The testator's son had communicated to his father that he was married to one L. with whom the testator never was acquainted. In fact, L. was the son's mistress. Thereafter the testator bequeathed certain property to his son's wife, L. *Held*, that the legacy does not fail. *Anderson* v. *Berkley*, [1902] 1 Ch. 936.

In accord with previous English authority, the court found that the son's mistress was the person designated by the testator. But on the point that an innocent legatee, personally unknown to the testator, should not be deprived of her bequest because of misrepresentations to the testator by another, this seems to be the first decision. Where the beneficiary was personally known to the testator, the legacy was allowed, on the ground that it may have been given owing partly to personal affection rather than to the misrepresentation. *Wilkinson* v. *Joughin*, L. R. 2 Eq. 319. This reason however fails in the principal case. Moreover, a gift *inter vivos* under these circumstances has been declared voidable. *Harris* v. *Delamar*, 3 Ired. Eq. (N. C.) 219. Fraud of the legatee will avoid the bequest. *Kennell* v. *Abbott*, 4 Ves. 802. Likewise undue influence by anyone. *In re Cahill*, 74 Cal. 52. These analogous cases leave the decision in the principal case open to question. A reason for the decision is that an innocent legatee is otherwise deprived of the testator's bounty. But the bequest in the principal case may well be considered as the probable and contemplated result of the deception. *Cf. Melenish* v. *Milton*, 3 Ch. D. 27, 34–35. Further, although the testator cannot control the alternative distribution of his property, this should have no greater influence than in cases of lapsed and void bequests and legacies.

BOOKS AND PERIODICALS.

CONSTITUTIONALITY OF SHIP SUBSIDIES AND SUGAR BOUNTIES. — The power of Congress to grant bounties to ship owners or sugar manufacturers is denied by a recent writer in the Columbia Law Review. *Ship Subsidies and Sugar Bounty Statutes: Their Constitutionality*, by Herman Foster Robinson, 2 Colum. L. Rev. 525 (Dec., 1902). The author argues that the power to appropriate money raised by taxation is only co-extensive with the power to tax. He maintains that Congress can tax only for a public purpose, and that payments for bounties are not for a public purpose. If bounty acts are unconstitutional, he believes that payments made under them could be recovered, and that Congress would have no power to reimburse those who might be damaged by relying upon them.

It is a part of the definition of a tax that it shall be for a public purpose. Accordingly, levies authorized by state legislatures for private purposes have always been held void. *Curtis's Admr.* v. *Whipple*, 24 Wis. 350. Further, state acts authorizing public bond issues in aid of private enterprises are held unconstitutional on the ground that the power to contract is limited by the power to tax. *Loan Assn.* v. *Topeka*, 20 Wall. (U. S. Sup. Ct.) 655 Appropriation of money in the treasury for private purposes by a state would be equally unconstitutional, since the money has been raised by taxation and must be replaced by the same means. If a state legislature, which has all legislative power not forbidden to it by the state constitution, is thus restricted as to the objects of its appropriations, it follows that Congress, which has only the more

limited powers conferred by the Constitution, cannot, under the general taxing power with which it is intrusted, appropriate money for other than public purposes.

What is a public purpose is primarily for the legislature to determine, and the courts will not interfere unless the decision of the legislature is wrong beyond a reasonable doubt. *Speer* v. *School Directors, etc.*, 50 Pa. St. 150. On the other hand, it is clear that the benefit to the public must be direct, not merely incidental. Accordingly, the promotion of manufactures is not a public purpose. *Loan Assn.* v. *Topeka, supra*. Tested by this rule, a sugar bounty would not seem to be for a public purpose; and it has been pronounced in a *dictum* to be unconstitutional on that account. *Miles Planting Co.* v. *Carlisle*, 5 App. D. C. 138. In Michigan, a state sugar bounty has been held void. *Michigan Sugar Co.* v. *Auditor-General*, 124 Mich. 674.

The validity of a ship subsidy, however, involves different considerations. It is well settled law that taxation for a railroad connecting a community with some other region is for a public purpose, though the road be outside the community to be taxed, and even outside the state. *Railroad Co.* v. *County of Otoe*, 16 Wall. (U. S. Sup. Ct.) 667. The analogy between such a railroad and foreign-going shipping seems close, especially in view of the fact that the lines of vessels connecting this country with others are, like railroads, common carriers. *Liverpool, etc., Co.* v. *Phenix Ins. Co.*, 129 U. S. 397. Furthermore, in time of war a merchant marine is indispensable as an auxiliary to the navy. On the whole, there may well be room for an honest doubt as to whether the building up of a merchant marine is not a public purpose, and such doubt, if it exists, must be resolved in favor of the act of Congress.

If it be granted that appropriations are unconstitutional, the author's conclusion that the United States may recover back any sums paid out under them seems to follow. The government is bound by the acts of its officers only when they are acting within their rightful authority. Consequently it is held that money paid out by them under a misconstruction of law is recoverable. *United States* v. *Saunders*, 79 Fed. Rep. 407. See also *Wisconsin Central R. R. Co.* v. *United States*, 164 U. S. 190. The same rule should apply to payments made under an unconstitutional law.

The position of the author that Congress cannot reimburse those who may sustain loss by relying on an unconstitutional law is consciously taken in the face of the direct decision of the Supreme Court to the contrary. *United States* v. *Realty Co.*, 163 U. S. 427. The court there held that irrespective of the constitutionality of the law those who had acted in reliance upon it had such a moral or honorary claim that Congress might lawfully appropriate money for them. The arguments against the view taken by the court were fully presented by counsel, and it seems extremely unlikely that the court will overrule its decision.

DOES AN AGENT IMPLIEDLY WARRANT HIS AUTHORITY? — The recent case of *Oliver* v. *The Bank of England*, [1902] 1 Ch. 610, has called forth an article in The Law Quarterly Review in which the authority of that case is discussed under the title *Some Recent Developments of the Doctrine of Collen* v. *Wright*, by Francis R. Y. Radcliffe, 18 L. Quart. Rev. 364 (Oct., 1902). *Collen* v. *Wright*, it will be remembered, is the English case in which it was first authoritatively laid down that an agent innocently acting without authority and inducing the plaintiff to enter into a contract for an existing principal, impliedly warrants his agency. *Collen* v. *Wright*, 8 E. & B. 647. Since the court there professed to find consideration for the warranty in the plaintiff's consent to make the contract, the writer in The Law Quarterly Review contends that the doctrine cannot properly be extended to cases in which the professing agent induces an act other than entering into a contract, and that *Oliver* v. *The Bank of England* is consequently wrong. In that case a broker, thinking himself an agent under a power of attorney which proved to be a forgery, demanded that the Bank of England allow him to transfer some consols; and this the Bank did,